February 26, 2007

Mr. Tom Kimball
State Water Resources Control Board
Water Quality Division
P.O. Box 100
Sacramento, CA 95812-0100

Dear Mr. Kimball:

SUBJECT: Methylmercury Objectives for Inland Surface Waters, Enclosed Bays, and Estuaries, Informational Scoping Document

In late 2005, the State of California's Delta Protection Commission (DPC) convened a collaborative of Delta stakeholders to provide input to the Central Valley Regional Water Quality Control Board (Regional Board) for consideration in the development of a TMDL for Methylmercury in the Delta. It was, and continues to be, the desire of the Delta Methylmercury TMDL Collaborative (Collaborative) to contribute to the Regional and/or State Boards' efforts to satisfy mandates imposed by the U. S. Environmental Protection Agency, while at the same time developing meaningful and realistically feasible programs to do so.

The Collaborative has spent the last year and a half working with Regional Board staff on the development of the proposed Delta Methylmercury TMDL program, and is encouraged by some of the changes that have been made to the proposed Basin Plan Amendment (BPA) as part of that process. However, one of the biggest questions Collaborative members have raised in the TMDL process – the relationship between aqueous methylmercury concentrations and concentrations in fish tissue – remains an unanswered question today.

According to a technical review of Central Valley Regional Board's June 2006 staff reports for the TMDL undertaken for the Collaborative, the relationship between aqueous methylmercury concentrations and fish tissue levels may not be the same for all regions of the Delta as the Regional Board suggested, but rather, the relationship may be linear and specific to different regions of the Delta. It has been acknowledged by Regional Board staff and other researchers that aqueous methylmercury levels vary not only between different regions of the Delta, but even within one wetland site. Given that the relationship between aqueous methylmercury concentrations and fish tissue levels varies Delta-wide, it is certainly probable that "one size does not fit all" – and this is even more true as one's perspective moves away from the Delta region to include tributaries and

other watersheds. It is therefore the Collaborative's position that: 1) water column objectives are not as useful an indicator as fish tissue objectives to address the overall goal of reducing human health and wildlife risks from mercury in fish; and 2) sound science should be employed to gather data to formulate fish tissue objectives specific to individual regions or water bodies (rather than promulgating a universal Statewide policy that does not take these regional differences into account).

Another criticism of the Delta Methylmercury TMDL staff reports issued in June 2006 that remains valid today, relates to "positive operator bias" errors. The technical review of those staff reports noted that the data Regional Board staff used for the linkage analysis (to establish the aqueous MeHg-fish tissue relationship) was not collected for this purpose, and therefore is not an accurate representation of what actually occurs in the Delta. This criticism also applies to the use of data collected as part of the 2000 SFEI study of anglers in San Francisco Bay to make generalizations about anglers in the Delta. The SFEI study included different fishing modes (i.e., boat anglers in addition to beach/bank anglers) whereas information collected in the Delta over the last couple of years includes only shore anglers. Also, the information collected on shore anglers in the Delta is based on a relatively small sample size (n=47). Rather than using the data from the SFEI studies to make generalizations about anglers in the Delta (and other inland surface waters, enclosed bays, and estuaries), it seems appropriate to conduct more surveys of both boat and shore anglers to get a more accurate description of consumption rates that are specific to the individual water bodies that would be regulated by this TMDL.

Finally, one of the peer reviewers of the June 2006 Regional Board staff reports noted that the roles of Selenium, Iron, and possibly redox are not addressed in the reports. The State Board's process should include information not only on the potential methylmercury production "hot spots", but also on areas that actually demethylate mercury, so that the roles of both sources and sinks can be analyzed, and allow for a little bit more flexibility in how this TMDL program could be implemented.

Thank you for the opportunity to comment on this scoping document. The Collaborative will continue to participate in this process as it progresses, and looks forward to working with you to develop a viable program that can maximize benefits to the Delta as well as other regions of the State.

Sincerely,

Lori Clamurro
Dept. of Fish and Game, Water Branch
On Behalf of the Delta Protection Commission's Delta MeHg TMDL Collaborative

Cc: Patrick Morris, Central Valley Regional Water Quality Control Board